

Message Text

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ACTION EB-08

INFO OCT-01 IO-13 ISO-00 STRE-00 CEA-01 CIAE-00
COME-00 DODE-00 FRB-03 H-01 INR-10 INT-05 L-03
LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05 SS-15
STR-07 ITC-01 TRSE-00 ICA-11 SP-02 SOE-02 OMB-01
DOE-15 AGR-01 AF-10 ARA-10 EA-10 EUR-12 NEA-10
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R 141459Z APR 78

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TO SECSTATE WASHDC 8400

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PASS STR ELECTRONICALLY

E.O. 11652: N/A

TAGS: ETRD, GATT

SUBJECT: ARTICLE XXVIII NEGOTIATIONS - SECRETARIAT NOTE

1. SECRETARIAT HAS GIVEN US INFORMAL COPY OF DRAFT NOTE RELATING TO PROCEDURES TO BE FOLLOWED UNDER ARTICLE XXVIII. SECRETARIAT NOTE IS RESULT OF REQUEST BY U.S. THAT SECRETARIAT UPDATE PREVIOUS INSTRUCTIONS CONTAINED IN L/641 OF 31 MAY 1957. SECRETARIAT HAS NOT DECIDED HOW TO PROCEED WITH NOTE AND IS UNSURE WHETHER TO SEEK COUNCIL ADOPTION OF NOTE OR TO HAVE DIRECTOR GENERAL ISSUE IT ON HIS OWN RESPONSIBILITY. WE SEE SOME ADVANTAGE IN SEEKING COUNCIL ADOPTION SINCE NOTE WOULD THEN HAVE APPROVAL OF CPS AND WOULD BECOME PART OF BISD SERIES. ON THE OTHER HAND, PUTTING NOTE BEFORE COUNCIL COULD OPEN UP QUESTION OF RENEGOTIATION TO TIME-CONSUMING AND PERHAPS INCONCLUSIVE DISCUSSION. IN THIS REGARD, WE NOTE THAT SECRETARIAT DRAFT REQUIRES COUNTRIES WITHDRAWING CONCESSIONS TO NOTIFY COMPENSATORY

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OFFERS. ALTHOUGH THIS IS NOT NEW, SOME LDCS MAY SEE COUNCIL CONSIDERATION OF MATTER AS OPPORTUNITY TO MAKE DEMANDS FOR CHANGES. IN RECENT ARTICLE XXVIII NEGOTIATIONS WITH BRAZIL, FOR EXAMPLE, BRAZILIANS HAVE BEEN RELUCTANT TO MAKE COMPENSATORY OFFERS.

2. TEXT OF NOTE IS AS FOLLOWS:

"1. A CONTRACTING PARTY INTENDING TO NEGOTIATE FOR THE MODIFICATION OR WITHDRAWAL OF CONCESSIONS IN ACCORDANCE WITH THE PROCEDURES OF ARTICLE XXVIII, PARAGRAPH 1 - WHICH ARE ALSO APPLICABLE TO NEGOTIATIONS UNDER PARAGRAPH 5 OF THAT ARTICLE - SHOULD TRANSMIT A NOTIFICATION TO THAT EFFECT TO THE SECRETARIAT WHICH WILL DISTRIBUTE THE NOTIFICATION TO ALL OTHER CONTRACTING PARTIES IN A SECRET DOCUMENT. IN THE CASE OF NEGOTIATIONS UNDER PARAGRAPH 4 OF ARTICLE XXVIII, THE REQUEST FOR AUTHORITY TO ENTER INTO NEGOTIATIONS SHOULD BE TRANSMITTED TO THE SECRETARIAT TO BE CIRCULATED IN A SECRET DOCUMENT AND INCLUDED IN THE AGENDA OF THE NEXT MEETING OF THE COUNCIL.

2. THE NOTIFICATION OR REQUEST SHOULD INCLUDE A LIST OF ITEMS WHICH IT IS INTENDED TO MODIFY OR WITHDRAW INDICATING FOR EACH ITEM THE CONTRACTING PARTIES, IF ANY, WITH WHICH THE ITEM WAS INITIALLY NEGOTIATED. WHEREVER POSSIBLE, IT SHOULD BE INDICATED WHETHER THE INTENTION IS TO MODIFY A CONCESSION OR WITHDRAW IT, IN WHOLE OR IN PART, FROM THE SCHEDULE. THE NOTIFICATION OR REQUEST SHOULD BE ACCOMPANIED BY STATISTICS OF IMPORTS OF THE PRODUCTS INVOLVED, BY COUNTRY OF ORIGIN, FOR THE LAST THREE YEARS FOR WHICH STATISTICS ARE AVAILABLE. IF IT IS NOT POSSIBLE TO INCLUDE IN THE NOTIFICATION OR REQUEST AN INDICATION OF THE INITIAL NEGOTIATORS OR LIMITED OFFICIAL USE

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IMPORT STATISTICS, SUCH DATA SHOULD BE SUBMITTED TO THE SECRETARIAT AS SOON AS POSSIBLE THEREAFTER FOR DISTRIBUTION TO THE CONTRACTING PARTIES.

3. AT THE SAME TIME AS THE NOTIFICATION IS TRANSMITTED TO THE SECRETARIAT OR WHEN THE AUTHORIZATION TO ENTER INTO NEGOTIATIONS HAS BEEN GRANTED BY THE COUNCIL - OR AS SOON AS POSSIBLE THEREAFTER - THE CONTRACTING PARTY REFERRED TO IN PARAGRAPH 1 ABOVE SHOULD COMMUNICATE TO THE CONTRACTING PARTIES, WITH WHICH CONCESSIONS WERE INITIALLY NEGOTIATED, OR WHICH HAVE A PRINCIPAL SUPPLYING INTEREST, THE COMPENSATORY ADJUSTMENTS WHICH IT IS PREPARED TO OFFER.

4. ANY CONTRACTING PARTY WHICH CONSIDERS THAT IT HAS A PRINCIPAL OR A SUBSTANTIAL SUPPLYING INTEREST IN A CONCESSION WHICH IS TO BE THE SUBJECT OF NEGOTIATION UNDER ARTICLE XXVIII SHOULD CLAIM RECOGNITION THEREOF BY THE CONTRACTING PARTY REFERRED TO IN PARAGRAPH 1 ABOVE. IF THE LATTER RECOGNIZES THE CLAIM, THE RECOGNITION WILL CONSTITUTE A DETERMINATION BY THE CONTRACTING PARTIES OF INTEREST IN THE SENSE OF ARTICLE XXVIII:1.

IF A CLAIM OF INTEREST IS NOT RECOGNIZED, THE CONTRACTING PARTY MAKING THE CLAIM MAY REFER THE MATTER TO THE COUNCIL.

5. UPON COMPLETION OF EACH BILATERAL NEGOTIATION THE CONTRACTING PARTY REFERRED TO IN PARAGRAPH 1 ABOVE SHOULD SEND TO THE SECRETARIAT A JOINT LETTER ON THE LINES OF THE MODEL IN ANNEX A ATTACHED HERETO SIGNED BY BOTH PARTIES. TO THIS LETTER SHALL BE ATTACHED A REPORT ON THE LINES OF THE MODEL IN ANNEX B ATTACHED HERETO. THE REPORT SHOULD BE INITIALED BY BOTH PARTIES. THE SECRETARIAT WILL DISTRIBUTE THE LETTER AND THE REPORT TO ALL CONTRACTING PARTIES IN A SECRET DOCUMENT.

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CONTRACTING PARTY REFERRED TO IN PARAGRAPH 1 ABOVE SHOULD SEND TO THE SECRETARIAT, FOR DISTRIBUTION IN A SECRET DOCUMENT, A FINAL REPORT ON THE LINES OF THE MODEL IN ANNEX C ATTACHED HERETO.

7. CONTRACTING PARTIES WILL BE FREE TO GIVE EFFECT

TO THE CHANGES AGREED UPON IN THE NEGOTIATIONS AS
FROM THE FIRST DAY OF THE PERIOD REFERRED TO IN
ARTICLE XXVIII:1, OR, IN THE CASE OF NEGOTIATIONS UNDER
PARAGRAPH 4 OR 5 OF ARTICLE XXVIII, AS FROM THE DATE
ON WHICH THE CONCLUSION OF THE NEGOTIATIONS HAVE BEEN
NOTIFIED AS SET OUT IN PARAGRAPH 6 ABOVE. A NOTIFICATION
SHALL BE SUBMITTED TO THE SECRETARIAT OF THE DATE ON
WHICH THESE CHANGES WILL COME INTO FORCE.

8. FORMAL EFFECT WILL BE GIVEN TO THE CHANGES IN
THE SCHEDULES BY MEANS OF CERTIFICATIONS IN ACCORDANCE
WITH THE DECISION OF THE CONTRACTING PARTIES OF
19 NOVEMBER 1968 (BISD 16S/16)".

3. ANNEXES MENTIONED IN NOTE FOLLOW PREVIOUS PRACTICE
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OF NOTIFICATIONS. COPIES OF NOTE POUCHED TO STR (STEWART)
AND STATE (LYNN). VANDEN HEUVEL

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